

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARCUS R. WILLIAMS,

Plaintiff,

v.

DERRAL G. ADAMS, et al.,

Defendants.

CASE NO. 1:05-cv-00124-AWI-SMS PC

ORDER STRIKING NOTICE OF RENEWAL
OF MOTION FOR SUMMARY JUDGMENT,
AND DENYING PLAINTIFF'S MOTION FOR
RELIEF FROM THE NOTICE AS MOOT

(Docs. 94 and 98)

ORDER REQUIRING PLAINTIFF TO FILE A
RESPONSE TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT WITHIN
SIXTY DAYS

(Docs. 77 and 87)

_____/

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff Marcus R. Williams, a state prisoner proceeding pro se and in forma pauperis. This action is proceeding on Plaintiff's second amended complaint, filed October 13, 2006, against Defendants Adams, Hansen, Wan, and Beeler for violation of the Eighth Amendment of the United States Constitution. Plaintiff's claim against Defendants arises out of the alleged denial of adequate outdoor exercise and confinement to a cell for twenty-three and one half to twenty-four hours a day from January 2004 to June 2005 at California Substance Abuse Treatment Facility and State Prison in Corcoran, California.

On December 1, 2008, Defendants filed a motion for summary judgment. (Docs. 77-84.) On December 24, 2008, the Court issued an order relieving Plaintiff of his obligation to file a response to the motion pending resolution of Plaintiff's discovery motions, and Defendants' motion

1 for summary judgment was deemed vacated from the Court's calendar for administrative purposes
2 by order filed May 4, 2009. (Docs. 87, 90.) As set forth in the May 4 order, the motion was deemed
3 vacated until such time as the opposition and reply, if any, were filed and the motion was submitted.
4 Local Rule 230(l). In a separate order issued concurrently with that order, the Court ruled on
5 Plaintiff's motions to compel, and extended the discovery deadline for to allow for one final round
6 of discovery.

7 On July 15, 2009, Defendants filed a notice of renewal of their motion for summary judgment
8 on the basis that discovery is complete. (Doc. 94.) On August 10, 2009, Plaintiff filed a motion
9 seeking relief from Defendants' notice of renewal of their motion for summary judgment on the
10 ground that discovery is not complete in light of the pending motion for the issuance of a subpoena
11 duces tecum Plaintiff filed on June 24, 2009, and the pending motion to compel Plaintiff filed on
12 July 31, 2009. (Doc. 98.)

13 As set forth in the Court's order of May 4, 2009, due to the pendency of unresolved discovery
14 issues, Defendants' motion for summary judgment is deemed vacated until such time as the
15 opposition and reply, if any, are filed. That condition has not yet been fulfilled. Because
16 Defendants' notice of renewal of their motion for summary judgment was both premature and
17 unnecessary in light of the Court's May 4 order, it shall be stricken from the record. Plaintiff's
18 motion for relief from the notice of renewal of the motion is denied as moot.

19 In separate orders issued concurrently with this order, the Court denied Plaintiff's motion for
20 the issuance of a subpoena duces tecum and motion to compel. Therefore, all pending discovery
21 disputes have now been resolved and the discovery phase of this litigation is over. Plaintiff shall file
22 his opposition or statement of non-opposition to Defendants' motion for summary judgment within
23 sixty days from the date of service of this order.

24 Once Plaintiff files his opposition or statement of non-opposition, and the time for filing a
25 reply expires, with or without a reply, Defendants' motion for summary judgment will be deemed
26 submitted and an opinion will be issued in due course. No further action on the part of Defendants
27 is required for the motion to be deemed submitted for resolution on the Court's calendar.

28 ///

For the reasons set forth herein, it is HEREBY ORDERED that:

1. Defendants' notice of renewal of their motion for summary judgment, filed July 15, 2009, is STRICKEN;
2. Plaintiff's motion for relief from the notice of renewal of the motion is DENIED as moot;
3. Within **sixty (60) days** from the date of service of this order, Plaintiff shall file an opposition or a statement of non-opposition to Defendants' motion for summary judgment filed on December 1, 2008; and
4. If Plaintiff needs an extension of time to file his response to Defendants' motion for summary judgment, he must file a request for an extension of time prior to the expiration of the deadline set in this order.

IT IS SO ORDERED.

Dated: January 14, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE